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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,814	01/22/2004	Anthony F. Gigliotti	035813-003	5015
<div>7590 06/20/2007</div> <div>Robert E. Krebs THELEN REID & PRIEST LLP P.O. Box 640640 San Jose, CA 95164-0640</div> <div>EXAMINER VO, TED T</div> <div>ART UNIT PAPER NUMBER</div> <div>2191</div> <div>MAIL DATE DELIVERY MODE</div> <div>06/20/2007 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,814	Applicant(s) GIGLIOTTI ET AL.	
	Examiner Ted T. Vo	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 20-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This action is in response to the amendment filed by RCE on 05/11/2007.

Claims 1-15, 20-35 are pending in the application.

Specification

2. This is minor objection to the specification. A specification requires a standard arrangement set forth by 37 CFR 1.77(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) **BACKGROUND OF THE INVENTION.**
 - (1) **Field of the Invention.**
 - (2) **Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.**
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

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In this specification, FIELD OF THE INVENTION appears as a section heading. It should be noted that FIELD OF THE INVENTION is only a sub (1) under section heading: (f) BACKGROUND OF THE INVENTION. Correction is required.

Response to Arguments

3. In view of the Applicants' amendment/remarks, filed on 10/30/06:

In the claims, for example Claim 1, Applicants alleged that Microsoft does not teach

the global update repository. However, as mentioned in the previous action, global is only relative term.

Centralized database for update is not new, and it is used because the business purpose rather patentability purpose. For example, Microsoft could provide global update, i.e. all internet users can receive patch update by connecting to the Microsoft central server or using the Microsoft web site.

Evidence is they mention it in p. 13. It should be note that license requirement will not allows a company to open an update to all Internet users. Therefore, when includes GUR in the claims, it does not present a patenability, but rather preempts a business manner. Business corporations such as SUN Micros System, IBM, Microsoft own centralized server, they can provide global update.

It appears the argument is that "GLOBAL UPDATE REPOSITORY" is invention. Examiner disagrees. Microsoft reference does show it distributes patch update to a network device controlled by an organization such as a Government Agency, or all Microsoft' clients etc. Microsoft also has inoculation clients. The patch distribution is the same as of the claims. However, Microsoft does not use the term "GLOBAL UPDATE REPOSITORY"; however, "GLOBAL UPDATE REPOSITORY" is equivalent to a centralized database, and centralized database is common in the art, and its size is dependent on the business boundary. Therefore, Examiner finds that 103 issue is appropriate to address the Applicants' argument.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-15, 20-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft White Paper, "Understanding Patch and Update Management: Microsoft's Software Update Strategy", Microsoft Corporation, pages: i-iii, 1-14, October 2003.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Microsoft discloses,

A method for automatically distributing a software update to a network of devices controlled by an organization, the method comprising:

receiving application and system information from one or more inoculation clients installed on said devices, said receiving performed via peer-to-peer communication; (See the whole reference, particularly, Microsoft provides tools to a client within a small Organizations (p.7), Medium-Sized Organizations (p. 9), Large Organizations (p. 11), etc., these organizations are inoculation client application and system information peer-to-peer receiver);

comparing said application and system information with application and version information in a global update repository to determine if an update exists for a corresponding application controlled by an inoculation client, the global update repository including updates from multiple application manufacturers;

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(For example, see, p. 7, p. 10, Microsoft Baseline Security Analyzer supports security update that has means for comparing application and system information with the application and version information in an update repository. The analyzer supports for performing the security updates portion of a scan. Also see p 11, Microsoft Download website ('update repository'). See p. 13, "Microsoft Update", scheduled for release in Spring 2004, will consolidate the patches and updates into one repository ('update repository'). At launch, Microsoft Update will support patches, updates, and service packs for Windows 2000, XP, Server 2000 & 2003 operating systems as well as Microsoft Office 2003, Microsoft SQL Server 2000, and Microsoft Exchange Server 2003);

queueing said update if an update exists for an application controlled by an inoculation client; receiving a communication from said corresponding inoculation client checking for available distribution jobs;

(For example, the baseline security Analyzer allows users to scan (*queue*) one or more Windows-based computers for common security misconfigurations (p. 7-8) (i.e. has means for *checking for available distribution jobs* – also has means for *comparing said application and system information*), Security Update Inventory Tool provides ongoing scans of client computers for installed or applicable security updates (p. 11), Microsoft Baseline Security Analyzer 2.0 provides a true enterprise-ready scanning technology (p. 13). See content within Microsoft Baseline Security Analyzer 2.0 (p.13)); and *automatically transmitting said update to said corresponding inoculation client in response to said receiving a communication if an update exists for an application controlled by said corresponding inoculation client* (For example, see Distribute Software Updates Wizard Installer (p. 11-12) and see Office Update Inventory Tool).

Microsoft does not explicitly mention GLOBAL UPDATE REPOSITORY, but its website Microsoft Download website ('update repository') and in p. 13, "Microsoft Update", it mentions a future consolidation of a centralized update database.

Thus, it is obvious to the ordinarily in the art that, GLOBAL UPDATE REPOSITORY is only business manner complying the law or business license. It conforms to business agreements rather than an invention feature. For example, in p. 13, Microsoft clearly addresses that it can provide centralized server, and thus with a centralized server it can provide and update patching globally.

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As per Claim 2: Microsoft discloses, *The method of claim 1, further comprising: configuring an inoculation server distributed across one or more of the devices; and performing an initial connection between said inoculation server and said global update repository* (For example, see P. 6: the AutoUpdate feature can be configured to retrieve patches directly from Windows Update at regular intervals. Individuals can choose whether to be prompted to install new updates or have them install automatically. See p. 9-10: Clients are configured to connect to specific servers and can be configured for automatic software update installations or end-user prompting).

As per Claim 3: Microsoft discloses, *The method of claim 1, wherein said application and system information includes operating system information and version* (See content within Microsoft Update (p. 13)).

As per Claim 4: Microsoft discloses, *The method of claim 1, wherein said application and system information includes installed software applications and versions* (See Software Updates Installation Agent (p.12)).

As per Claim 5: Microsoft discloses, *The method of claim 1, wherein said application and system information includes network information* (For example, see Virus Information Alliance, p. 5).

As per Claim 6: Microsoft discloses, *The method of claim 1, wherein said application and system information is received in Extensible Markup Language (XML) format* (See Office Update Inventory Tool (p. 11)).

As per Claim 7: Microsoft discloses, *The method of claim 1, wherein said queuing said update includes linking said update package and said corresponding application in a database table* (For example, see Software Update Services Feature Pack, p. 11).

As per Claim 8: Microsoft discloses, *The method of claim 1, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* (i.e. Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

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As per Claim 9: Microsoft discloses, *The method of claim 8, therein said global update repository mines, retrieves, and archives external update information* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 10: Microsoft discloses, *The method of claim 9, wherein said external update information is mined and retrieved from external security websites* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 11: Microsoft discloses, *The method of claim 10, wherein said global update repository uses web spiders* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 12: Microsoft discloses, *The method of claim 1, wherein said comparing includes utilizing an HTTP GET or POST command.* (Functional equivalence: "command line operations for scanning one or more Windows-based computers" (p. 8); "MBSA UI or in the MBSA command line interface, seen in p. 7")

As per Claim 13: Microsoft discloses, *The method of claim 9, wherein said external update information contains a vendor type, said vendor type being automatic download and release, automatic download and manually confirm release, or manually download and confirm* (See section Software Update Service 2.0, p. 13).

As per Claim 14: Microsoft discloses, *The method of claim 1, wherein said comparing is performed by an inventory control engine* (e.g. Security Update Inventory Tool, p. 11).

As per Claim 15: Microsoft discloses, *The method of claim 1, wherein said queuing is performed by a distribution engine* (e.g. Distribute Software Updates Wizard, p. 12).

As per Claim 20: Microsoft discloses claim 20. See rationale in addressed in Claim 1.

As per Claim 21: Microsoft discloses, *The apparatus of claim 20, further comprising: means for configuring an inoculation server distributed across one or more of the devices; and means for performing an initial connection between said inoculation server and said global update repository.*

See rationale in addressed in Claim 2.

As per Claim 22: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes operating system information and version.* See rationale in addressed in Claim 3.

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As per Claim 23: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes installed software applications and versions.* See rationale in addressed in Claim 4.

As per Claim 24: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes network information.* See rationale in addressed in Claim 5.

As per Claim 25: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information is received in Extensible Markup Language (XML) format.*

See rationale in addressed in Claim 6.

As per Claim 26: Microsoft discloses, *The apparatus of claim 20, wherein said queuing said update includes linking said update package and said corresponding application in a database table.* See rationale in addressed in Claim 7.

As per Claim 27: Microsoft discloses, *The apparatus of claim 20, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* See rationale in addressed in Claim 8.

As per Claim 28: Microsoft discloses, *The apparatus of claim 20, therein said global update repository mines, retrieves, and archives external update information.* See rationale in addressed in Claim 9.

As per Claim 29: Microsoft discloses, *The apparatus of claim 28, wherein said external update information is mined and retrieved from external security websites.*

See rationale in addressed in Claim 10.

As per Claim 30: Microsoft discloses, *The apparatus of claim 29, wherein said global update repository uses web spiders.* See rationale in addressed in Claim 11.

As per Claim 31: Microsoft discloses, *The apparatus of claim 20, wherein said means for comparing includes means for utilizing an HTTP GET or POST command.* See rationale in addressed in Claim 12.

As per Claim 32: Microsoft discloses, *The apparatus of claim 28, wherein said external update information contains a vendor type, said vendor type being automatic download and release, automatic download and manually confirm release, or manually download and confirm.* See rationale in addressed in Claim 13.

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As per Claim 33: Microsoft discloses, *The apparatus of claim 20, wherein said means for comparing is an inventory control engine.* See rationale in addressed in Claim 14.

As per Claim 34: Microsoft discloses, *The apparatus of claim 20, wherein said means for queuing is a distribution engine.* See rationale in addressed in Claim 15.

As per Claim 35: Microsoft discloses claim 35. See rationale in addressed in Claim 1.

Conclusion


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTV
June 11, 2007


TED VO
PRIMARY EXAMINER